

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
) FCC 94-272
)
Allocation of Spectrum Below)
5 GHz Transferred from Federal) ET Docket No. 94-32
Government Use)

To: The Commission

COMMENTS OF LEACO RURAL TELEPHONE COOPERATIVE, INC.

Leaco Rural Telephone Cooperative, Inc. ("Leaco") by its attorney and pursuant to the Commission's "Notice of Proposed Rulemaking" in ET Docket 94-32 (released November 8, 1994) ("NPRM"), hereby submits the following comments in support of allocating the spectrum bands 2390-2400 MHz, 2402-2417 MHz and 4660-4685 MHz for the provision of interactive video, voice and data services in a manner that will ensure their availability in rural areas.

I. STATEMENT OF INTEREST

Leaco is a wireline telephone cooperative wholly-owned by its subscribers. Leaco provides landline telephone service, Basic Exchange Telecommunications Radio Service ("BETRS") and cellular service to rural parts of southeastern New Mexico and a portion of Loving county in west Texas. The area served by Leaco covers approximately 4,500 square miles and is sparsely populated.¹ On

¹ There are only 900 telephone subscribers spread throughout this vast area which equates to approximately 2/10 of a customer per square mile. Telephone service to 57 of these subscribers could only be provided using fixed cellular service and four of these 57 subscribers must use solar power in order to receive telephone service because there is no commercial power source available.

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behalf of its subscribers, Leaco has tried unsuccessfully to acquire enough new spectrum to provide interactive voice, video and data services within its service area in order to improve the quality of life in this rural part of the country. The Commission's NPRM requests comments on the procedures for reallocating 50 megahertz of spectrum in the 2390 -2400 MHz, 2402-2417 MHz and 4660-4685 MHz bands from federal government use to private sector use. Leaco believes that this spectrum could be used to provide interactive video, data and voice services to rural America.² The procedures adopted by the Commission to issue licenses for this spectrum and the rules and procedures governing their use will have a direct impact on Leaco and its subscribers. Accordingly, Leaco has a vested interest in the outcome of this proceeding.

II. BACKGROUND

Leaco has been providing telephone service for forty years. Leaco is extremely dedicated to providing quality service to its subscribers and attempts to meet the needs of its subscribers whenever possible. Within the last five years, Leaco has been approached by its subscribers, as well as educators³ and medical personnel⁴ in its

² On June 15, 1994, Leaco filed comments in the Commission's Notice of Inquiry, 9 FCC Rcd 2175 (1994) proposing to allocate the spectrum for this use.

³ Leaco's service area contains five school districts with a total of 33 schools and approximately 730 teachers. The approximately 13,360 students enrolled in these schools do not receive the educational opportunities afforded to students living in urban and suburban areas. It is difficult to attract quality teachers to the area and the student population is not large enough to support an advanced curriculum.

service area, to provide interactive telecommunications services. Given that currently neither off-the-air television service nor cable television service are available to the majority of the population residing in Leaco's telephone service area,⁵ Leaco realized that it would have an uphill struggle to get its subscribers the services they requested.

Leaco investigated several methods of providing educational and medical interactive video services as well as providing entertainment video, voice and data services to its subscribers. Leaco determined that the cost of installing cable or fiber in this sparsely populated area is prohibitively expensive. In 1992, Leaco concluded that the only way to provide the advanced telecommunications services this area needs is through radio-based communications.

Leaco explored the possibility of providing students, medical personnel and subscribers with service using channels allocated to the Instructional Television Fixed Service ("ITFS") and Multichannel Multipoint Distribution Service ("MMDS"). However, it discovered that ITFS and MMDS spectrum was not available in its area because of mutual exclusivity with surrounding systems in more populated areas. Additionally, Leaco explored the possibility of providing interactive video service utilizing frequencies in the 28 GHz band. However, the Commission has initiated a rulemaking proceeding to determine whether

⁴ Medical treatment facilities are severely limited. There are currently two medical treatment facilities in Leaco's service area. Medical emergencies require treatment at hospitals located in Lubbock, Texas -- a distance of 120 miles.

⁵ Two television translators with programming originating out of Albuquerque, New Mexico serve a tiny portion of the southeastern segment of Leaco's telephone service area.

sharing of the 28 GHz band between satellite and terrestrial uses is feasible or whether the band should be segmented, allowing exclusive use by either terrestrial or satellite services.⁶ Also, there has been some indication that these frequencies may be better suited for congested urban areas than for sparsely populated rural areas. Having exhausted the obvious sources for providing these services using current technology, Leaco views this proceeding as an opportunity to ensure the availability of the newly allocated spectrum for the provision of interactive video, voice and data services to rural areas.

III. DISCUSSION

In the NPRM, the Commission states that its "principal objective in making this spectrum allocation decision is to ensure that the spectrum is put to its best and most valued use and that the greatest benefit to the public is attained." NPRM para. 8. The Commission then concludes that the way to achieve this goal is to adopt a broad and general allocation along the approach established in ET Docket No. 92-9, where the Commission reallocated the 2 GHz band for Personal Communications Services ("PCS"). Under the proposed flexible allocation approach, the Commission believes that market forces will determine the best possible use of the spectrum rather than the Commission designating specific uses. The Commission then concludes that under the proposed flexible allocation approach, most of the

⁶ See, Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, 9 FCC Rcd 1394 (1994).

services to be provided in this spectrum would likely meet the statutory criteria for auctions. NPRM para. 9.

While Leaco applauds the Commission's flexible allocation approach and believes that Leaco's proposed use of the spectrum would be consistent with such an approach, Leaco is concerned that the Commission's determination to use competitive bidding to award licenses may prohibit the use of the spectrum for any purpose whatsoever in rural America. Leaco respectfully submits that under specific circumstances (i.e., where competition does not exist) market forces do not ensure that spectrum is awarded to those who value it the most. As discussed below, Leaco proposes that entities proposing to provide service to rural areas where competition does not exist should not be subject to competitive bidding. Alternatively, Leaco proposes that the FCC should adopt competitive bidding rules that will ensure the provision of new radio-based technologies to rural America.

**A. Special Consideration Must Be Given To Rural Areas
When Developing The Licensing Scheme.**

The Commission has not given practical consideration to rural areas when allocating spectrum for new radio-based communications services. Despite Congress's mandate in the Omnibus Budget Act Reconciliation Act of 1993 ("Budget Act") which directed the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."

(emphasis added),⁷ the FCC's recently adopted competitive bidding rules have miserably failed to ensure the provision of new radio-based technology to rural America. To date, not one sliver of spectrum that has been auctioned has been awarded to a rural telephone company!⁸ Nor does it appear as if rural telephone companies will be very successful in obtaining broadband PCS spectrum through the competitive bidding process.⁹ The Commission must make a more concerted effort to allocate spectrum for purposes that benefit those living in rural areas.

The Commission's belief that competitive forces will bring the services to rural America is simply unrealistic. Historically, rural telephone companies have been the only providers of telecommunications services in rural markets. Larger companies chose not to provide telephone service to these less economically desirable areas. Moreover, because of the small population base, rural areas simply

⁷ See Budget Act, Section 309(j)(3).

⁸ Contrary to the Commission's contention that it has fulfilled its obligation to rural telephone companies by adopting rules that include these companies as designated entities that receive bidding preferences, (NPRM, Appendix D, para. 7, footnote 15), rural telephone companies were specifically denied bidding preferences for Narrowband PCS, Interactive and Video Data Services and Broadband PCS. See "Third Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP 9 FCC Rcd 2941 (1994) ("Third R&O") and "Fourth Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 9 FCC Rcd 2330 (1994) ("Fourth R&O"). "Fifth Report and Order" in Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 59 FR 37566 (July 29, 1994) ("Fifth R&O").

⁹ Despite best efforts to put the capital together to participate in the broadband PCS auctions for the entrepreneurial blocks, Leaco has determined that very few rural telephone companies are going to be able to participate.

cannot support more than one telecommunications service provider for any length of time. Leaco wishes to assure the Commission that its intent is not to discourage competition in its service area. Leaco merely wants the opportunity to provide the services to its subscribers.

To remedy the problem, Leaco proposes that the Commission exempt "qualifying rural telephone companies" from having to competitively bid on newly allocated spectrum.¹⁰ Leaco submits that a "qualifying rural telephone company" should be able to submit a proposal to the Commission prior to the auction demonstrating its service proposal and its deployment schedule. Provided the rural telephone company is able to demonstrate its qualifications using the suggested criteria set forth below, the rural telephone company should be permitted to carve out its service area and obtain a license for the service without having to go through the competitive bidding process. Leaco is not suggesting that qualifying rural telephone companies not pay for their licenses, merely that they be given a meaningful opportunity to obtain the spectrum.

Leaco believes the following criteria should be used by the Commission in determining whether a rural telephone company qualifies for exempt status. The rural telephone company must serve fewer than 10,000 access lines and demonstrate that its proposed use of the

¹⁰ Leaco believes that rural telephone companies deserve special consideration because of their past commitment of service to rural America. The dedication and commitment to provide quality service in the face of high costs and difficulty should be rewarded, not penalized by the enactment of rules that would inhibit or prohibit the provisioning of new radio-based technologies.

service could boost productivity, create jobs, educate children or improve the provision of health care.¹¹ The rural telephone company should also demonstrate how it will extend service to unserved or underserved communities or extend educational opportunities and medical services to these areas.¹²

Prior to the auction, the Commission should review the proposal and make a determination as to whether the rural telephone company's proposal qualifies it for exempt status. If the rural telephone company qualifies, the Commission should announce to all potential bidders that the geographic area proposed by the rural telephone company will be excluded from the auction.¹³ Competitive bidding would then take place with the bidders' knowledge of the excluded area.

¹¹ These goals were established by the Commission in the Notice Of Inquiry, 9 FCC Rcd 2175 (1994) ("NOI") in ET Docket No. 94-32.

¹² For example in Leaco's case, its subscribers lack video, data and voice services. Leaco proposes to use the allocated spectrum to provide interactive video, voice and data services to its subscribers. Leaco's proposed interactive service will also extend educational opportunities by allowing teachers in larger communities and urban areas to instruct and interact with students in rural areas in real time. Similarly, the provision of medical services will be enhanced by allowing medical personnel in rural areas to receive real time instruction on both emergency and non-emergency medical procedures via video and voice communications. Likewise, data can be transmitted from the rural medical staff to medical personnel based in larger urban hospitals for evaluation and response. This interactive medical telecommunications technology will allow sick and injured patients to be treated closer to home without the need to travel long distances in order to receive proper medical attention. Leaco's proposed service would meet each of the policy goals established by the Commission and under the criteria proposed herein would qualify Leaco for exempt status.

¹³ Leaco proposes that the rural telephone company's geographic service area be limited to the counties in which the rural telephone company has access lines.

After bidding has been completed, the Commission would determine the average per MHz per POP price paid by the winning bidders for the spectrum (in much the same manner the Commission determined the price to be paid by the broadband PCS pioneers preference licensees) and obtain payment from the qualifying rural telephone company. Leaco respectfully submits that this proposal will best ensure deployment of new radio-based technology to rural parts of the country.

B. If Rural Areas Are Subject To Competitive Bidding, Rules Should Be Adopted That Ensure New Services Will Come To Rural America.

As previously stated, the Budget Act directs the FCC to ensure that licenses for new technologies be awarded in a manner that promotes "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays."

As discussed in Section A above, exempting rural telephone companies from the competitive bidding process with respect to the subject spectrum allocation as proposed herein will best ensure that rural America receives the benefits of the National Information Infrastructure resulting from the proposed allocation. However, should the Commission decide not to exempt rural telephone companies, Leaco submits that the following proposed rule changes will increase the likelihood that rural Americans will receive the benefit of new radio-based technologies.

1. Ten MHz Channel Blocks And Small License Areas Will Help Ensure That Interactive Services Are Available To Rural America.

The Commission proposes to license the available spectrum using competitive bidding and seeks comment on the size of the channel

blocks and the size of geographic areas.¹⁴ Leaco submits that the channel blocks should be of sufficient size to carry video, voice and data simultaneously and suggests that channel blocks be licensed in segments of 10 MHz each. Should the Commission adopt rules that allocate the spectrum in smaller-sized channel blocks, Leaco submits that the Commission should not limit aggregation of the channel blocks so that Leaco's proposed service can be provided.

With respect to the size of the geographic areas to be licensed, Leaco submits that the use of relatively small geographic areas will ensure coverage to rural areas. Smaller geographic areas will be more affordable to rural telephone companies and are more likely to represent the rural telephone company's service area. Leaco suggests that licenses for this spectrum be awarded using cellular Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"). Use of MSAs/RSAs ensured the rapid deployment of cellular service across the country. For those service providers interested in serving larger areas, adjacent geographic areas could be consolidated to provide wider service.

2. Strict Geographic-Based Build Out Requirements Will Ensure Coverage In Rural Areas.

Leaco urges the Commission to adopt strict construction deadlines. Specifically, Leaco submits that the Congressional requirement to ensure service to rural America can be met only if all licensees are required to relinquish their rights to serve any portion of their licensed markets which are unserved at the end of a five-year period. Similar in approach to the Commission's cellular five-year

¹⁴ See NPRM, para. 9.

fill-in rules, re-licensing unserved areas at the end of five years will ensure that rural areas of the country will not remain unbuilt and forever held captive by a disinterested licensee. Leaco strongly urges the Commission not to adopt population-based service benchmarks which provide no incentive for the provision of service to large rural areas of the country. A licensee may easily fulfill population-based service standards by concentrating on the densely populated portions of any particular market leaving the less populated rural areas unserved.

3. Licensees Should Have The Ability To Partition Their Markets And Assign Their Rights To Third Parties.

Regardless of the size of the geographic service areas selected by the Commission, winning bidders should be given the flexibility to subdivide and license the market to another entity. The Commission can better ensure both service to rural America and participation of rural telephone companies by adopting policies which permit the voluntary partitioning of markets. By granting the joint requests of qualified rural telephone companies and licensees of any frequency block to partition the market, the Commission will foster both the provision of new radio services to rural areas and the participation by rural telephone companies in the provision of these new radio services.¹⁵ Accordingly, the Commission should adopt rules that state that such partitioning will be permitted and encouraged. Moreover, any anti-trafficking rules which the Commission may adopt should not

¹⁵ Leaco notes for the record that the rapid deployment of cellular service in the larger RSAs is partly attributable to the ability to partition the market among Independent telephone companies.

be applicable to licensees seeking to partition their markets. This will encourage and enable rural telephone companies to provide new radio-based technologies to rural America.

IV. CONCLUSION

The reallocation of spectrum, a limited, highly-valued resource, is an important responsibility requiring the Commission to closely examine the probable impact on the public interest, convenience and necessity. Consequently, the Commission must carefully examine its methods for awarding licenses for new services to determine whether they will ensure that the Commission's overall policy goals are met. As set forth above, Leaco's proposed methods of awarding licenses for this spectrum meets these policy goals. Accordingly, Leaco respectfully requests that the Commission adopt Leaco's proposed recommendations.

Respectfully submitted,

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